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REMARKS

Applicant has thoroughly considered the Examiner's remarks in the Office action of March 14, 2006 and respectfully requests reconsideration of claims 1-7, 9-13, 15, and 17-20. By this Amendment D, claims 1, 4, 6, 9-12, 15, 17, and 18 have been amended, and claims 8, 14, and 16 have been canceled.

Claim 1 has been amended to include the subject matter of claim 8, claim 4 has been amended to include the subject matter of claim 14, and claim 6 has been amended to include the subject matter of claim 16.

As discussed in detail below, the pending claims recite several features that are not shown in the cited prior art. For example, claims 1 and 6 as amended and claim 12 include subject matter directed to pointing and peaking an antenna of a portable webcasting system. Claims 9, 13, and 17 recite, among other limitations, sweeping a range of directions to locate satellites and selecting the satellite with the strongest signal. Claim 4 as amended and claims 10 and 18 include subject matter directed to setting a center frequency and data rate (i.e., bandwidth) in response to input from a teleport. And claims 11, 15, and 19 include subject matter directed to adjusting the power of a transmission signal sent from a first location by a portable webcasting system in response to input from a teleport.

A supplemental declaration is submitted herewith according to MPEP § 603, 37 CFR 1.67, and MPEP 603.01.

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Claim Rejections Under 35 U.S.C. § 112 - Written

Description

Applicant respectfully requests reconsideration of the rejection under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement as set forth in pages 2-3 of the Office action. As filed, the specification of the present application describes the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventors, at the time the application was filed, had possession of the invention as claimed.

The written description requirement of 35 U.S.C. §112, first paragraph, is separate and distinct from the enablement requirement and most often arises in the context of determining whether new or amended claims are supported by the description of the invention in the application as filed (i.e., the new or amended claims do not seek to add "new matter"). According to the MPEP, a strong presumption exists that an adequate written description of a claimed invention is present when the application is filed. See MPEP §2163(I)(A). "[R]ejection of an original claim for lack of written description should be rare." MPEP §2163(II)(A) (emphasis added). The test for sufficiency of support in the application is whether "the disclosure of the application relied upon 'reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter.'" *In re Hayes Microcomputer Prods. Inc.*, 982 F.2d 1527, 1533, 25 USPQ 2d 1241, 1245 (Fed. Cir. 1992), quoting from *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563, 19 USPQ 2d 1111, 1116 (Fed. Cir. 1991). Applicant respectfully submits that the

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disclosure of the application as originally filed conveys to one skilled in the art that Applicant had possession of the invention at that time.

With respect to the aspects of an electronic compass and optimizing reception of a transmission signal at a satellite of amended claim 1 and claim 12, Applicant has satisfied the written description requirement by explicit description of the invention. Paragraph [0074] of the published application recites:

"Router computer 202 also provides motor commands to automatically control the position of dish antenna 224. Such control is provided as part of the antenna pointing and peaking procedure described in greater detail above. Router computer 202 determines a desired antenna position based on magnetic azimuth signals provided by magnetic compass 210, and based on position information provided by GPS receiver 214. Router computer also receives current antenna pointing information via attitude sensors 232 coupled to antenna 224. Based on the difference between the desired antenna position and the current pointing information, router computer 202 provides motor commands to one or more positioning motors 234 coupled to antenna 224."

Thus, the specification discloses estimating direction based, at least in part, on input from an electronic compass.

Paragraphs [0081] and [0082] recite:

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"FIG. 4 illustrates a preferred antenna peaking procedure for peaking the antenna after the receiver of transceiver 212 achieves lock. As indicated above, for improved accuracy, the peaking procedure is preferably performed for each axis an initial time and a second time. At steps 402 and 404, router computer 202 initializes a peaking position variable ("delta") to an initial value (e.g., one degree) and measures signal strength. At steps 406 and 408 router computer 202 finely adjusts the antenna position (via motor drives 234) by a value of 1 delta ( $1 \cdot \text{delta}$ ) in the positive direction and again measures signal strength. As illustrated by steps 410 and 412, if the signal strength improves (increases), the peaking position variable is decreased (e.g., divided by two). If, however, the signal strength does not improve, at steps 414 and 416 router computer 202 finely adjusts the antenna position in the negative direction (e.g.,  $2 \cdot \text{delta}$  in negative direction) and again measures signal strength. As illustrated by step 418, if signal strength improves at this point, the peaking position variable is decreased (step 412). If the signal strength does not improve, router computer 202 moves the antenna in the positive direction by one delta ( $1 \cdot \text{delta}$ ) (step 420) and thereafter reduces the value of delta (step 412). After each time the value of delta is reduced (i.e., after step 412 in FIG. 4), router computer 202 determines if the reduced value of delta is less than the antenna precision (step 422). In other words, if delta becomes smaller than the

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increment size over which router computer can adjust the pointing angle of the antenna, the peaking procedure is halted. If, however, the value of delta is greater than the antenna precision, the peaking process returns to step 404 and repeats until such a time that the value of delta is less than the antenna precision."

Thus, a signal optimization procedure is disclosed in the specification. For additional description, see paragraphs [0036]-[0061], [0070], and [0078] as well as FIGS. 3-4. These recitations provide a detailed description of estimating a direction based on input from an electronic compass and an antenna controller optimizing reception of a transmission signal at a satellite by optimizing the direction of a transmitting antenna such that a person skilled in the art could only conclude that Applicant was in possession of the invention as claimed when the application was filed. Accordingly, Applicant respectfully submits that amended claim 1 and claim 12 fully comply with the written description requirement under 35 U.S.C. § 112, first paragraph.

With respect to the aspects of antenna sweeping of claims 9 and 13, Applicant has also satisfied the written description requirement by explicit description of the invention. Paragraph [0079] of the specification recites:

"At step 316, router computer 202 drives antenna 224 such that it sweeps through its full azimuth range. While antenna 224 is so sweeping, router computer 202 monitors signal strength received in the downlink

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channel (i.e., via downlink converter 226 and demodulator/decoder 228). At steps 318-326, router computer 202 records signal peaks received above a threshold minimum level."

Thus, the description discloses an antenna controller modulating a coordinate signal such that an antenna sweeps a range of directions. See paragraphs [0036]-[0050], [0074], FIG. 3, and the Appendix for additional disclosure. These recitations provide a detailed description of an antenna controller sweeping an antenna through a range of directions as claimed such that a person skilled in the art could only conclude that the Applicant was in possession of the invention as claimed when the application was filed. Accordingly, Applicant respectfully submits that claims 9 and 13 fully comply with the written description requirement under 35 U.S.C. § 112, first paragraph.

With respect to setting a transmitter center frequency and data rate in response to input from a teleport as set forth in amended claim 4 and in claims 10 and 18, Applicant has satisfied the written description requirement by explicit description of the invention. Paragraphs [0033]-[0034] recite:

"The teleport is responsible for allocating satellite bandwidth to the various portable terminals dynamically, adapting an overall bandwidth plan to the inroute bandwidth requirements of each remote terminal while staying within the limited total bandwidth available from the satellite. . . . [D]ynamically planning the overall allocation of inroute bandwidth

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to the complete set of concurrently operating remote terminals . . . composing instructions to the remote terminals to set the transmitter center frequency and data rate (i.e. bandwidth)."

These recitations provide a detailed description of a teleport allocating bandwidth to a plurality of uplinks, and the uplinks setting a bandwidth in response to input from the teleport such that a person skilled in the art could only conclude that Applicant was in possession of the invention as claimed when the application was filed. Accordingly, Applicant respectfully submits that amended claim 4 and claims 10 and 18 fully comply with the written description requirement under 35 U.S.C. § 112, first paragraph.

With respect to the aspect of an antenna directing a transmission signal according to a coordinate signal as set forth in amended claim 6, Applicant has satisfied the written description requirement by explicit description of the invention. Paragraph [0074] of the specification recites:

"Router computer 202 also receives current antenna pointing information via attitude sensors 232 coupled to antenna 224. Based on the difference between the desired antenna position and the current pointing information, router computer 202 provides motor commands to one or more positioning motors 234 coupled to antenna 224."

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Moreover, the antenna is a directional, "high-gain dish antenna" according to paragraph [0034]. Thus, an antenna directing a transmission signal in response to a coordinate signal is disclosed in the description. See paragraphs [0036]-[0061], [0070], [0078], and [0081] as well as FIGS. 3-4 for additional disclosure. These recitations provide a detailed description of an antenna directing a transmission signal according to a coordinate signal such that a person skilled in the art could only conclude that Applicant was in possession of the invention as claimed when the application was filed. Accordingly, Applicant respectfully submits that amended claim 6 fully complies with the written description requirement under 35 U.S.C. § 112, first paragraph.

With respect to adjusting the power of a satellite transmission signal in response to input from a teleport as recited in claims 11, 15, and 19, Applicant has also satisfied the written description requirement by explicit description of the invention. In describing a teleport of the invention, paragraph [0024] of the description recites:

"One or more routers comprise a plurality of ports, one for each demodulator, including the following processes for each demodulator: monitoring one or more signal quality parameters of the signal such as, for example, carrier to noise ratio or energy per bit ratio; composing instructions to the remote terminal to command the transmit power up or down to maintain the teleport's receive signal in an acceptable range; providing a server side of the TCP/IP proxy process; providing communications with the inroute allocation



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computer, whereby the latter commands the inroute demodulator and router to expect the center frequency and data rate of the transmitter of the associated remote terminal."

For more information, also see paragraph [0034] generally. These recitations provide a detailed description of adjusting the power of a satellite transmission signal in response to input from a teleport such that a person skilled in the art could only conclude that Applicant was in possession of the invention as claimed when the application was filed. Accordingly, Applicant respectfully submits that claims 11, 15, and 19 fully comply with the written description requirement under 35 U.S.C. § 112, first paragraph.

The Examiner bears the initial burden of presenting evidence or reasons why one skilled in the art would not recognize that the written description of the invention provides support for the claims. "A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption." See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The Examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The Examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97." See MPEP §2163.04

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"In rejecting a claim, the Examiner must set forth express findings of fact which support the lack of written description conclusion. These findings should identify the claim limitation at issue; and establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. A simple statement such as 'Applicant has not pointed out where the new (or amended) claim is supported, nor does there appear to be a written description of the claim limitation '\_\_\_\_' in the application as filed.' may be sufficient where the claim is a new or amended claim, the support for the limitation is not apparent, and applicant has not pointed out where the limitation is supported." See MPEP § 2163.04(I). Applicant respectfully submits that the Examiner has failed to meet the burden of presenting a *prima facie* case for lack of written description.

In this instance, Applicant clearly pointed out the sections of the Application that supported the subject matter rejected for lack of written description in Amendment C filed on February 16, 2006. Therefore, the simple, conclusory statements in the Office action at pages 2-3 that "limitations . . . are not supported by the specification as filed" are wholly insufficient to establish a *prima facie* case for lack of written description. Further, the Examiner has cited no evidence or reasoning why a person skilled in the art would not have recognized that the inventor was in possession of the invention as claimed when the application was filed.

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Therefore, the Examiner has failed to establish a *prima facie* case for lack of written description and the written description rejection is improper.

In light of the support for the subject matter of amended claims 1, 4, 6, and claims 9-13, 15, 18, and 19 again pointed out in this Amendment D by the Applicant, and the failure of the Examiner to present a *prima facie* case for a written description rejection, the patent laws require that the Examiner either set forth sufficient reasons and evidence, by a preponderance of the evidence, why a person skilled in the art would not have recognized that the inventor was in possession of the invention as claimed at the time the application was filed, or withdraw the written description rejection.

**Claim Rejections Under 35 U.S.C. § 112 - Enablement**

Applicant also respectfully requests reconsideration of the rejection under 35 U.S.C. § 112, first paragraph, for failing to comply with the enablement requirement as set forth on pages 3-4 of the Office action. The original specification is submitted as providing an enabling disclosure to persons skilled in the art to make and use the invention as claimed.

As a matter of Patent Office practice, the Examiner has the initial burden to establish a reasonable basis to question the enablement provided for the claimed invention. In *re Wright*, 999 F.2d 1557, 1562, 27 USPQ2d 1510, 1513 (Fed. Cir. 1993) (examiner must provide a **reasonable explanation** as to why the scope of protection provided by a claim is not adequately enabled by the disclosure). A specification disclosure containing a teaching of the

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manner and process of making and using an invention in terms that correspond in scope to those used in describing and defining the subject matter sought to be patented must be taken as being in compliance with the enablement requirement of 35 U.S.C. § 112, first paragraph, unless there is a reason to doubt the objective truth of the statements contained therein which must be relied on for enabling support. Assuming that sufficient reason for such doubt exists, a rejection for failure to teach how to make and/or use will be proper on that basis. *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). As stated by the court, "it is incumbent upon the Patent Office, whenever a rejection on this basis is made, to explain why it doubts the truth or accuracy of any statement in a supporting disclosure and to back up assertions of its own with acceptable evidence or reasoning which is inconsistent with the contested statement. Otherwise, there would be no need for the applicant to go to the trouble and expense of supporting his presumptively accurate disclosure." 439 F.2d at 224, 169 USPQ at 370. See MPEP § 2164.04.

As explained above with respect to the written description requirement of 35 U.S.C. § 112, embodiments of the subject matter regarding antenna pointing and peaking, setting a bandwidth in response to input from a teleport, and adjusting the power of a transmission signal in response to input from a teleport are disclosed in the specification. Embodiments of the subject matter regarding antenna pointing and peaking as in amended claims 1 and 6 and claim 12 are found in the specification as published at paragraphs [0036]-[0061], [0070], [0074], [0078] and

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[0081]-[0082] as well as FIGS. 3-4. Embodiments of the subject matter regarding setting a bandwidth for a transmission signal in response to input from a teleport as in amended claim 4 and claims 10 and 18 are found in the specification at [0033]-[0034]. Embodiments of the subject matter regarding adjusting the power of a transmission signal in response to input from a teleport as in claims 11, 15, and 19 are found at paragraph [0034].

In fact, Applicant has even gone so far as to provide extensive details for implementing a commercial embodiment of the invention in the Appendix beginning at paragraph [0089].

The conclusory assertions in the Office action: "The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains... to make and/or use the invention," and, "The specification does not provide enough details about the structure and operation of the elements associated with the above identified claimed features to enable one skilled in the art to make and use the invention without undue experimentation," do not provide the required basis sufficient to raise doubt regarding the truth of any statement in the specification, nor do such statements constitute acceptable evidence or reasoning that is inconsistent with the scope of the pending claims.

Additionally, according to *In re Bowen*, 492 F.2d 859, 862-63, 181 USPQ 48, 51 (CCPA 1974), the minimal requirement is for the examiner to give reasons for the uncertainty of the enablement. This standard is applicable even when there is no evidence in the record of operability without undue experimentation beyond the disclosed

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embodiments. See also *In re Brana*, 51 F.3d 1560, 1566, 34 USPQ2d 1436, 1441 (Fed. Cir. 1995) (citing *In re Bundy*, 642 F.2d 430, 433, 209 USPQ 48, 51 (CCPA 1981)). In the written enablement rejection, the language should focus on those factors, reasons, and evidence that lead the examiner to conclude that the specification fails to teach how to make and use the claimed invention without undue experimentation. This can be done by making specific findings of fact, supported by the evidence, and then drawing conclusions based on these findings of fact. The examiner should specifically identify what information is missing and **why** one skilled in the art could not supply the information without undue experimentation. See MPEP § 2164.06(a). References should be supplied if possible to support a *prima facie* case of lack of enablement, but are not always required. *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). However, **specific technical reasons are always required**. See MPEP § 2164.04.

The rejection based on the enablement requirement of 35 U.S.C. § 112, first paragraph, is deficient because the Examiner has not met the minimum requirement of giving reasons for the uncertainty of enablement. The Examiner has not specifically identified information missing from the disclosure. At page 3 of the Office action, the Examiner merely listed aspects of some of the claims, but failed to specifically identify information necessary for one skilled in the art to make and use the invention that is missing from the specification. The Examiner has not explained why one skilled in the art could not supply any information that may be missing without undue experimentation. The Examiner made no findings of fact and

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showed no supporting evidence in the Office action. The Office action fails to advance any adequate reasons to establish that a person skilled in the art could not practice optimizing reception of the transmission signal at the satellite, a portable satellite uplink responsive to a teleport for setting a transmitter center frequency and data rate, said center frequency and data rate defining a bandwidth for transmissions to a particular satellite to manage transmissions from a plurality of portable uplinks to one or more satellites, and a portable satellite uplink that is responsive to a teleport for adjusting the power with which the satellite transmission signal is transmitted without undue experimentation.

Those skilled in the art are well-acquainted with writing software code and constructing electronic devices such that given the information at paragraphs [0036]-[0061], [0070], [0074], [0078] and [0081]-[0082] as well as FIGS. 3-4 and the Appendix, one could readily apply their level of understanding to successfully implement the outlined antenna pointing and peaking process. Nothing in the Office action refutes the disclosure of the claimed peaking and pointing process.

Those skilled in the art are also well-acquainted with writing software code and constructing electronic devices such that given the information at paragraphs [0033]-[0034] and the Appendix, one could readily apply their level of understanding to successfully implement the outlined process for setting a bandwidth in response to input from a teleport. Nothing in the Office action refutes the disclosure of the claimed setting a bandwidth in response to input from a teleport.

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Those skilled in the art are well-acquainted with writing software code and constructing electronic devices such that given the information at paragraph [0034] and the Appendix, one could readily apply their level of understanding to successfully implement the outlined adjusting the power of a transmission signal in response to input from a teleport. Nothing in the Office action refutes the disclosure of adjusting the power of a transmission signal in response to input from a teleport.

Thus, the rejection under 35 U.S.C. § 112, first paragraph regarding enablement is improper and the patent laws require that the Examiner either provide an explanation as to why the Examiner doubts the truth or accuracy of statements in the supporting disclosure and back up any assertions with evidence or reasoning which is inconsistent with any contested statement, specifically identify missing information and give evidence as to why one skilled in the art could not supply the missing information, or withdraw the rejection.

#### Finality of Subsequent Office Action

Applicant notes that an Office action responding to this Amendment D may not be made final unless the improper written description and enablement rejections are withdrawn. "[T]he first Office action on the merits should present the best case with all the relevant reasons, issues, and evidence so that all such rejections can be withdrawn if applicant provides appropriate convincing arguments and/or evidence in rebuttal. Providing the best case in the first Office action will also allow the second Office action to be made final should applicant fail to



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provide appropriate convincing arguments and/or evidence. Citing new references and/or expanding arguments in a second Office action could prevent that Office action from being made final." See MPEP § 2164.04. If the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c), then the rejection should not be made final. See MPEP 706.07(a).

The Examiner failed to properly present a *prima facie* case for both a written description rejection and an enablement rejection, and therefore has not provided the best case in the current Office action. Therefore, a further rejection on this basis would be a new or expanded ground of rejection, preventing the subsequent Office action from being made final. Applicant submits that any Office action responding to this Amendment D must be non-final if the Examiner wishes to maintain a rejection based on the written description or enablement requirements of 35 U.S.C. § 112, first paragraph.

**Claim Rejections Under 35 U.S.C. § 112, second paragraph**

Claims 8-18 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

As amended, claims 1 and 12 recite, "providing a corresponding coordinate signal representative of the estimated direction." Applicant submits that the

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corresponding coordinate signal is clearly representative of the estimated direction as recited in the amended claims 1 and 12, and respectfully requests that the rejection be withdrawn.

As amended, claims 4, 10, and 18 recite, "said center frequency and data rate defining a bandwidth for transmissions to a particular satellite." Applicant submits that "a bandwidth" is sufficiently definite when read in light of the specification, including the procedures outlined at paragraph [0034] and, thus, criteria for "a desired bandwidth" is no longer required for the claim to be clear. Applicant respectfully requests that the rejection be withdrawn.

As amended, claims 11 and 15 recite, "the portable satellite uplink adjusts the power with which the satellite transmission signal is transmitted in response to input from a teleport." Applicant submits that these claims clearly set forth that the portable satellite uplink adjusts the power with which the satellite transmission signal is transmitted and respectfully requests that the Examiner withdraw the rejection.

**Claim Rejections Under 35 U.S.C. § 103(a)**

Claims 1, 4, 6, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Toporek (US 6,584,083) in view of Haldeman (US 6,801,576). Applicant submits that the cited references fail to teach or suggest each and every element of the claims as amended.

Under the normal examination process, "a thorough review of the prior art and examination on the merits for compliance with the other statutory requirements, including

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those of 35 U.S.C. §§ 101, 102, 103, and 112, is to be conducted prior to completing an Office action which includes a rejection for lack of written description." See MPEP § 2163. Applicant assumes that the Office action is complete and that the absence of any rejection under 35 U.S.C. §§ 101, 102, or 103 indicates that the subject matter of claims 8-10, 12-14, and 16-18 is allowable over the cited references.

Claim 1 has been amended to include the subject matter of claim 8 and is therefore allowable over the cited references.

Claim 4 has been amended to include the subject matter of claim 14 and is therefore allowable over the cited references.

Claim 6 has been amended to include the subject matter of claim 16 and is therefore allowable over the cited references.

Claim 20 depends from independent claim 6 and is allowable over the cited references for at least the reasons that claim 6 is allowable over the cited references.

Claims 11, 15, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Toporek (US 6,584,083) in view of Haldeman (US 6,801,576) in view of Schwendenman (US 5,392,451). Applicant submits that the cited references fail to teach adjusting the transmission power of a portable satellite uplink as claimed.

Schwendeman teaches increasing the power with which a page is broadcast by a satellite until the page is received by a paging receiver (see Schwendeman at Col. 5, Line 9 to Col. 6, Line 65). The paging receiver of Schwendeman

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transmits an acknowledgement to the satellite system, but the power of the transmitter is not adjustable (see Schwendeman at Col. 16, Line 64 to Col. 17, Line 6 and FIG. 11).

In contrast, the present invention teaches adjusting the power with which a portable satellite uplink transmits a transmission signal to a satellite in order to optimize reception of the transmission signal at the satellite (see Application at paragraphs [0033]-[0034]). To this end, claims 11 and 15 claim a portable webcasting system that "adjusts the power with which the satellite transmission signal is transmitted in response to input from a teleport." Claim 19 recites, "adjusting the power with which the satellite transmission signal is transmitted in response to input from a teleport." Applicant submits that claims 11, 15, and 19 are therefore allowable over the cited references.

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In view of the foregoing, Applicant submits that claims 1, 4, and 6 are allowable over the cited art. Claims 2-3, 5, 7, 9-13, 15 and 17-20 depend from these claims and are believed to be allowable for at least the same reasons as the independent claims from which they depend.

It is felt that a full and complete response has been made to the Office action and Applicant respectfully submits that pending claims 1-7, 9-13, 15, and 17-20 are allowable over the cited art and that the subject application is now in condition for allowance.

The fact that Applicant may not have specifically traversed any particular assertion by the Examiner should not be construed as indicating Applicant's agreement therewith.

Applicant does not believe that a fee is due in connection with this response. If, however, the Commissioner determines that a fee is due, he is authorized to charge Deposit Account No. 19-1345.

Respectfully submitted,



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